IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1499 of 2005

British Pharmaceutical Laboratory
and others .. Petitioners

versus

Pharmaceuticals, Chemicals & Allied
Employees Union & others .. Respondents

...

Mr.K.S. Bapat for the petitioners.

Mr.R.D. Bhat for the respondents.

CORAM : D.G. KARNIK, J

DATED : 13th June 2006.

ORAL JUDGEMENT:-

1. By this petition, the petitioners take exception to the judgement and order dated 29th September 2003 passed by the industrial court holding

that the petitioners had committed an unfair labour practice under item no.9 of schedule IV of Maharashtra Recognition of Trade Union and Prevention of Unfair Labour Practices Act 1971 (for short 'MRTU and PULP Act') by effecting illegal closure and further directing them to pay wages to workmen from the date of illegal closure i.e. 26th October 1995.

2. The petitioner no.1 is a partnership firm and petitioner nos.2 and 3 are its partners. The petitioners were running an industry of manufacture of pharmaceutical products. According to the petitioners, at the time of closure, they were employing about 32 - 33 people in their factory at Wadala and were also employing about 12 staff members in its head office. Thus according to the petitioners, total number of workmen employed by them at the time of closure were about 45 and much less than 100 and therefore, no permission under chapter VB of the Industrial Disputes Act (for short "the I.D.Act") was required. According to the respondent no.1 (for short "the respondent") the total number of workmen employed by the petitioners were more than 100 and therefore, the closure effected without permission under section 25(o) of the I.D. Act was

illegal.

3. On 24th August 1995, the petitioners put up a notice on the notice board stating that they had closed the undertaking of the petitioner no.1 with effect from 26th October 1995. In the closure notice, the petitioners stated that due to the continuous downfall of the production the company was facing financial problems and was incurring loss of Rs.2,00,000/- to Rs.2,50,000/- per month. The notice further stated that in order to escape further loss, it was decided to close down the activities of the company by offering legal dues to the employees. It is pertinent to note that though the notice stated that the company would offer the legal dues to employees, the legal dues were never tendered; the petitioners contended that the dues would be paid after sale of the property of the company. Learned counsel for the respondent submitted that part of the property of the company has already been sold and yet the legal dues have not even been offered to the employees.

4. Previously, the workmen employed by the petitioners were members of Kamgar Utkarsha Sanghatna

(for short "KUS Union"). The said KUS Union had filed a complaint bearing complaint bearing no. 753 of 1995 against the petitioner regarding some other unfair labour practices allegedly indulged by the petitioner. It appears that KUS union did not pursue the said complaint properly or atleast workmen perceived so and therefore, they resigned its membership and joined the respondent no.1 union. The respondent no.1 union thereafter decided to espouse the cause of the workmen who were complaining of the illegal closure of the company in breach of section 25(o) of the Industrial Disputes Act (for short 'I.D.Act'). Accordingly, respondent no.1 union filed a complaint on 27th February 1998 alleging that the closure of the undertaking effected by the petitioner was in breach of section 25-O of the I.D. Act as the petitioner was employing more than 100 workmen and had not obtained requisite permission for the closure. Respondent no.1 also prayed for condonation of delay in filing of the complaint pleading that previously the workmen were represented by KUS union which had not espoused the cause of the workmen who had resigned the membership of KUS union and joined the respondent no.1 union, resulting in some delay in filing of the complaint.

5. The complaint (complaint no.221 of 1998) filed by the respondent no.1 came up for hearing before the industrial court, Mumbai. Respondent no.1 adduced the evidence of Sitaram Babaji Valavate, one of the workmen and petitioners adduced the evidence of Jayantilal Thapalal Shah, one of the partners of petitioner no.1. After considering the evidence adduced by the parties, the industrial court condoned the delay. On merits the industrial court held that it was established that petitioners were employing more than 100 workmen in the undertaking and had closed down the undertaking without obtaining prior permission u/s.25-O of the I.D. Act. The industrial court therefore held that the closure was illegal and void under section 25-O of the I.D. Act. The industrial court further held that the petitioners were therefore bound to pay the wages to employees and non payment of the wages amounted to breach of an implied condition of contract of service amounting to unfair labour practice under item no.9 of schedule IV of the MRTU and PULP Act. In view of these findings, the industrial court held and declared that the action of the petitioner in effecting the closure was illegal and non payment of the wages amounted to

unfair labour practice under item no.9 of schedule IV of the MRTU and PULP Act. The industrial court therefore directed the petitioners to pay the wages to the concerned workmen from 26th October 1995 onwards till their services were terminated lawfully. That judgement is impugned in this petition.

6. Mr.Bapat, learned counsel for the petitioners submitted that finding recorded by the industrial court that the petitioners were employing more than 100 workmen at the relevant time is so erroneous as to be perverse. He submitted that there was no evidence on record to hold that the petitioners were employing more than 100 workmen. He invited my attention to certain statements made in their deposition by the witness of the respondent, Mr.Sitaram Babaji Valavate. According to him the witness had admitted that the petitioners were employing less than 100 employees. He therefore submitted that the finding recorded by the industrial court that the petitioners were employing more than 100 workmen was perverse. In his examination in chief Mr.Sitaram Valavate has stated that 65 workers were working in the factory at Wadala and about 40 to 45 workers and staff were working in the head office.

Thus, in the examination-in-chief, Mr.Sitaram Valavate has stated that there were about 105 - 110 workmen in all (factory + head office) employed by the petitioners. In the cross-examination, he has stated that there were about 32 workmen working at the relevant time as permanent workers. This according to the petitioners is an admission that the total number of workmen were 32. I am afraid this amounts to misreading of the evidence. What he has stated in the cross is that there were 32 permanent workmen. No question was asked to him about the temporary workmen. Out of the 65 workmen working in the factory, 32 may be permanent and others may be temporary. In that context he may have stated that 32 were permanent employees. I am therefore unable to hold that the industrial court has overlooked the admission allegedly given by the witness of the respondent no.1.

7. Section 25(o) falls under Chapter VB of the I.D.Act. Provisions of chapter VB are applicable to industrial establishments in which not less than 100 workmen are employed on an average per working day for the preceding 12 months. Therefore, the relevant period for considering the strength of the employees

for the purpose of application of section 25(O) is the period of 12 months immediately before the closure. The respondents had adduced evidence about the strength of its employees only for the period of 3 months viz. August to October 1995. They had not produced any record of the number of workmen employed during the period from October 1994 to July 1995 which was the relevant period of 12 months. Adverse inference can legitimately be drawn on account of the non production of the record. According to the petitioners, they were employing about 45 employees during the period of 3 months immediately preceding the closure. Therefore, the provisions of Provident Funds Act and Employees State Insurance Act were applicable to them. The records relating to the provident fund and payment of contribution under the ESIS were available with the petitioners. That record would have easily disclosed the number of employees employed by the petitioner during the period of 12 months immediately preceding the closure. That record was not filed. Even the muster rolls were not filed in respect of period October 1994 to July 1995. Best possible evidence in possession of the petitioners was withheld. In the circumstances, adverse inference had to be drawn

against the petitioners for non production of the records. In the light of this state of affairs, it cannot be said that the finding recorded by the industrial court that it was proved that the petitioners were employing more than 100 workmen during the relevant period of one year immediately preceding the closure is preponderantly probable finding. It is certainly a possible finding of fact. A possible finding of fact cannot be interfered with in exercise of a writ jurisdiction under Article 227 of the Constitution of India.

8. Mr.Bapat, learned counsel for the petitioner submitted that the closure, whether lawful or unlawful, resulted into termination of an employment of all the employees of the petitioner. If the closure was unlawful at the most it can be said that the termination of the services of the employee was unlawful. An unlawful termination would amount to an unfair labour practice covered under item 1 of schedule IV of the MRTU & PULP Act and not under item 9 of schedule IV. Section 7 of the MRTU & PULP Act confers on the labour court exclusive jurisdiction to decide complaints relating to unfair labour practices described in item 1 of schedule IV of the Act. In

view of section 7, the industrial court had no jurisdiction to grant any relief to the respondent because granting of the relief amounted to examining whether the petitioners had committed unfair labour practice under item 1 of schedule IV of the MRTU & PULP Act. The argument cannot be accepted in view of the authoritative decision of the Supreme Court in S.G. Chemicals and Dyes Trading Employees' Union Versus S.G. Chemicals and Dyes Trading Limited and another, reported in 1986 SCC (L & S) 303. In that case, the Company had closed down its Churchgate division which was found by the industrial court to be in contravention of section 25-O of the I.D. Act. The industrial court however had declined to declare that the Company had committed unfair labour practice under item 9 of schedule IV of the MRTU & PULP Act holding that closure of the undertaking would at the most amount to breach of the statutory provision viz. section 25-O and not a failure to implement an award, settlement or agreement, which was the essence of item 9 of schedule IV. Reversing the decision of the industrial court as confirmed by the High Court, the Supreme Court held that it was implied condition of every agreement including a settlement that the parties thereto will act in conformity with the law.

Therefore, breach of a statutory provision like section 25-O of the I.D. Act was a breach of an implied condition of an agreement or a settlement. The Supreme Court further held that the failure to follow the statutory provision of section 25-O of the I.D. Act amounted to breach of an implied condition of an agreement amounting to an unfair labour practice falling under item 9 of schedule IV of the MRTU & PULP Act. Therefore, the contention of the learned counsel for the petitioner that breach of section 25-O of the I.D.Act cannot be regarded as an unfair labour practice under item 9 of schedule IV of MRTU & PULP Act has to be rejected. Consequently, the industrial court and not the labour court had the jurisdiction to entertain the complaint under clause(d) of section 5 of the MRTU & PULP Act.

9. The industrial court was right in coming to the conclusion that the petitioner was guilty of unfair labour practice falling under item 9 of schedule IV of the MRTU & PULP Act. The industrial court was also right in directing the petitioner to pay to the concerned workmen wages from 26th October 1995.

10. There is no merit in the petition which is hereby dismissed. Rule is discharged with costs.

D.G. KARNIK, J